

H. R. 1212

## A BILL

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Polygraph Protection Act".

## SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.

It shall be unlawful for any employer engaged in commerce or in the production of goods for commerce-

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against-

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge or in any manner discriminate against an employee or prospective employee because-

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of himself or others, of any right afforded by this Act.

SEC. 3. NOTICE OF PROTECTION.

The Secretary of Labor shall prepare, have printed, and distribute a notice that employers are prohibited by this Act from using a lie detector test on any employee or prospective employee. Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and prospective employees are customarily posted, the notice distributed by the Secretary under this section.

SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

(a) In General.--The Secretary of Labor shall--

(1) issue such rules and regulations as may be necessary or appropriate for carrying out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPOENA AUTHORITY.--For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50).

SEC. 5. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.--(1) Subject to paragraph (2)--

(A) any employer who violates section 3 may be assessed a civil money penalty not to exceed \$100 for each day of the violation; and

(B) any employer who violates any other provision of this Act may be assessed a civil money penalty not to exceed \$10,000.

(2) In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (3) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.--The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.--(1) An employer who violates the provisions of this Act shall be liable to the employee or prospective employee affected by such violation. An employer who violates the provisions of this Act shall be liable for such legal or equitable relief as may be appropriate, including (without limitation) employment, reinstatement, promotion, the payment of wages lost, and an additional amount as consequential damages.

(2) An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees or prospective employees (or any person acting on behalf of such employee or employees) for or in behalf of himself or themselves and other employees or prospective employees similarly situated. No such civil action may be commenced more than 3 years after the date of the alleged violation.

(3) The court shall award to a prevailing plaintiff in any action under this subsection the reasonable costs of such action, including attorneys' fees.

## SEC. 6. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.--The provisions of this Act shall not apply with respect

to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.-- (1) Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to--

(A) any expert or consultant under the Department of Defense or any employee of any contractor of such department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such department or any employee of any contractor of such department in connection with such activities.

(2) Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to--

(A) (i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.--Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

#### SEC. 7. DEFINITIONS.

As used in this Act--

(1) the term "lie detector test" includes any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, any written or oral test, or any other device or method (whether mechanical, electrical, or chemical) which is used, or the results of which are used, for the purpose of detecting deception, verifying truthfulness, or rendering a diagnostic opinion regarding the honesty of an individual.

(2) the term "employer" includes an agent, independent contractor, employee, or any other person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee; and

(3) the term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

#### SEC. 8. EFFECTIVE DATE.

This Act shall take effect 7 months after the date of its enactment.

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2 activities.

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(2) In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (3) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

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(2) An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees or prospective employees (or any person acting on behalf of such employee or employees) for or in behalf of himself or themselves and other employees or prospective employees similarly situated. No such civil action may be commenced more than 3 years after the date of the alleged violation.

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